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Appropriations Policy Brief

H.R. 2642—Iraq/Afghanistan Appropriations Bill

BY THE NUMBERS:

In millions

	Request	House
Amendment 1, FY 2008 Funding	102,400	98,202
Amendment 1, FY 2009 Funding	66,063	65,921
Amendment 3, FY 2008 Funding	14,154	17,559
Amendment 3, FY 2009 Funding	3,605	3,600
Amendment 3, 2008—2018 Mandatory Spending	0	66,103
Total	186,222	251,385

Background: The President requested \$189.3 billion in FY 2008 DoD emergency spending to fund operations in Iraq and Afghanistan. To date, \$86.8 billion has been appropriated, and designated as emergency spending—\$16.8 for Mine Resistant Ambush Protected (MRAP) vehicles and an additional \$70 billion was provided in the [FY 2008 omnibus](#).

The three amendments to H.R. 2642 would fulfill most of the outstanding portions of the FY 2008 request, provide \$66 billion as a “bridge fund” for FY 2009, add \$15 billion of additional discretionary spending for FY 2008 and FY 2009 combined, and increase entitlement spending by \$66 billion. In addition, Amendment 3 contains a tax increase of \$51.6 billion. ***Total spending, for all three amendments, would amount to \$251.4 billion—\$65.2 billion or 35.0% above the President’s request.***

Budget Compliance: The legislation designates the entire amount of discretionary funding as emergency spending to avoid the \$954 billion discretionary cap set by the budget resolution (S.Con.Res. 21). The budget resolution set no limit on emergency spending. The bill violates PAYGO by not offsetting the \$15 billion for unemployment compensation benefits.

Process: Members will be voting on three amendments to the House-passed FY 2008 Military Construction-Veterans Appropriations bill. The first amendment provides war funding for FY 2008 and FY 2009. The second amendment contains policy language on Iraq (including language providing for a withdrawal from Iraq). The third amendment raises taxes, increases entitlement spending by \$66 billion over ten years, and adds \$15 billion in other discretionary spending. The three amendments are analyzed further below.

Amendment 1: War Funding

Funding Levels for FY 2008 Supplemental Appropriations:

<i>In millions</i>	
Department of Defense	Amendment 1
Military Personnel	17,554
Operations & Maintenance	30,250
<i>Army</i>	16,344
<i>Navy</i>	2,953
<i>Marine Corps</i>	160
<i>Air Force</i>	5,923
<i>Defense-wide</i>	3,388
<i>Army Reserve</i>	165
<i>Navy Reserve</i>	110
<i>Marine Corps Reserve</i>	70
<i>Air Force Reserve</i>	166
<i>Army National Guard</i>	686
<i>Air National Guard</i>	287
Afghanistan Security Fund	1,400
Iraq Security Forces	1,500
Iraq Freedom Fund	50
Procurement	41,031
Research, Development, Test, and Evaluation	1,624
Defense Health Program	1,439
Revolving and Management Funds	1,843
Other Department of Defense Programs	1,511
Total	98,202

Items of Note:

Transfer Authority: Provides the Secretary of Defense with \$2.5 billion in transfer authority under this chapter—with the requirement that the Secretary of Defense notify Congress promptly of each transfer made.

Commanders' Emergency Response Program (CERP): Limits to \$1.03 billion the amount of funding in the amendment that can be used for CERP “for the purpose of enabling military commanders in Iraq, Afghanistan, and the Phillippines to respond to urgent humanitarian relief and reconstruction requirements...”

Armored Vehicles: Of the amounts provided for operations in Afghanistan and Iraq, the bill would allow the Department of Defense to purchase up to 20 heavy and light armored vehicles.

Counterterrorist Operations: Makes available, from funding provided in the amendment, \$150 million for programs to build the capacity of a foreign country’s national military forces in order to conduct counterterrorist operations.

Funding Levels for FY 2009 Supplemental Appropriations:

In millions

Department of Defense	Amendment 1
Military Personnel	1,194
Operations & Maintenance	51,916
<i>Army</i>	37,300
<i>Navy</i>	3,500
<i>Marine Corps</i>	2,900
<i>Air Force</i>	5,000
<i>Defense-wide</i>	2,649
<i>Army Reserve</i>	79
<i>Navy Reserve</i>	42
<i>Marine Corps Reserve</i>	47
<i>Air Force Reserve</i>	12
<i>Army National Guard</i>	334
<i>Air National Guard</i>	53
Afghanistan Security Fund	2,000
Iraq Security Forces	1,000
Procurement	4,435
Research, Development, Test, and Evaluation	388
Defense Health Program	1,100
Other Department of Defense Programs	2,188
Mine Resistant Ambush Protected Vehicle Fund	1,700
Total	65,921

Items of Note:

Transfer Authority: Provides the Secretary of Defense with \$4 billion in transfer authority under this chapter—with the requirement that the Secretary of Defense notify Congress promptly of each transfer made.

Reports on Progress Toward Stability in Iraq: Requires the Secretary of Defense to issue a quarterly report to Congress on “performance indicators and measures for progress toward military and political stability in Iraq.” The specific elements for these reports are spelled out on pages 28—34 of the [amendment](#).

General Provisions:

Intelligence Activities: Deems intelligence activities funded by this amendment as being authorized by the National Security Act of 1947.

Authorized Spending for NATO: Increases the authorized discretionary spending level for the U.S. contribution to NATO from \$362.2 million to \$435.3 million.

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Amendment 2: Iraq Policy Section

In general, Amendment #2 of the supplemental contains many of the same provisions included in other Iraq-withdrawal measures considered by this Congress. Highlights are as follows:

Mission Capable Units in Iraq: Prohibits funds from being used to deploy any unit of the Armed Forces to Iraq unless the President has certified in writing to Congress at least 15 days in advance of the deployment that the unit is “fully mission capable.” The President could waive this requirement for “reasons of national security.”

Time Limit on Combat Deployments: Prohibits funds from being used to initiate, continue, or execute any order that has the effect of extending the deployment for Operation Iraqi Freedom of any Army unit (including Reserve and National Guard) beyond 365 days—or beyond 210 days for any Marine unit (including the Reserve). The President could waive this requirement for “reasons of national security.”

Time Off Between Combat Deployments: Prohibits funds from being used to initiate, continue, or execute any order that has the effect of deploying for Operation Iraqi Freedom any Army unit (including Reserve and National Guard) if it had been deployed within the previous 365 days—or within the previous 210 days for any Marine unit (including the Reserve). The President could waive this requirement for “reasons of national security.”

Interrogation: Prohibits the U.S. government from using interrogation techniques not authorized by and listed in the United States Army Field Manual FM2-22.3 Human Intelligence Collector Operations.

Red Cross Notification: Prohibits funds from being used by the U.S. intelligence community to detain any individual to which the Red Cross is denied access.

No Permanent Bases: Prohibits the U.S. from establishing a permanent base in Iraq.

No U.S. Control of Iraqi Oil: Prohibits the U.S. from exercising control over any oil resource of Iraq.

Iraqi Matching Funds: Conditions the provision of U.S. funds for reconstruction in Iraq upon the Iraqi Government matching such funds dollar-for-dollar (subject to certain exceptions, including grants to promote democracy and human rights, humanitarian demining, refugee assistance, and low-cost programs under the Commander’s Emergency Response Program).

Iraqi Reimbursement for Fuel Costs: Conditions the obligation of funds under “Operation and Maintenance, Defense-Wide” on the completion of an agreement with the Iraqi Government to subsidize fuel costs for U.S. forces operating in Iraq.

Withdrawal from Iraq: Requires the President, within 30 days of this bill’s enactment, to commence an “immediate and orderly” withdrawal of U.S. Armed Forces from Iraq, with a goal of completing the withdrawal within 18 months. After such withdrawal, U.S. forces could remain in Iraq only to:

- Protect U.S. Armed Forces, U.S. diplomatic facilities, and American citizens;
- Conduct limited training of, equip, and provide logistical and intelligence support to the Iraq Security forces; and
- Engage in “targeted counterterrorism operations” against al-Qaeda, its affiliates, and other terrorist organizations in Iraq.

Requires the Secretary of Defense to report to Congress by July 1, 2008, and then every 90 days thereafter, on the progress toward a presence in Iraq that meets what is outlined in the bill and described above.

Requires the State Department, within 45 days of this bill’s enactment, to report to Congress on a strategy for civilian-led post-conflict stabilization and reconstruction assistance for Iraq.

Extension of Wartime Statute of Limitations: Extends from three to five years the length of time after the end of war (or authorization of the use of military force) after which the suspension of the statute of limitations on prosecuting war-related contract fraud would end. In other words, this provision would allow contractors who commit fraud related to war or the congressionally authorized use of military force to be prosecuted for a longer time after the end of military action.

War Profiteering: Creates a new federal crime of “war profiteering and fraud,” for persons who knowingly attempts to defraud, or succeeds at defrauding, the United States by materially overvaluing a good or service. Punishment would be up to \$1 million or up to 20 years in prison, or both. Also creates a separate crime for false war-time contracting, with a punishment of up to \$1 million or up to 10 years in prison, or both. Allows such suits to be filed in any district where any party to the contract in question or the provider of goods or services is located.

MEJA Expansion: Includes language similar to the MEJA Expansion and Enforcement Act (H.R. 2740), as it passed the House on October 4, 2007, by a vote of [389-30](#). This section would expand the Military Extraterritorial Jurisdiction Act (MEJA, P.L. 106-523) to allow for the criminal prosecution of *all* federal contractors who are serving in or near an area where the Department of Defense (DoD) is conducting a “contingency operation” and would require the establishment of investigative units overseas in areas where contractors are operating. Currently, certain government employees or contractors (e.g. State Department contractor Blackwater USA) are not covered under MEJA law and thus cannot

be prosecuted for alleged crimes committed overseas in DoD contingency operation areas. For more information, see the RSC Legislative Bulletin on H.R. 2740 [here](#).

Removal Procedures for Non-DoD Employees and Contractors: Authorizes the Attorney General to prescribe regulations governing the investigation, apprehension, detention, delivery, and removal of non-DoD employees and contractors accused of crimes.

Possible Conservative Concerns: Some conservatives may be concerned that this amendment would undermine the constitutional authority of the President as Commander-in-Chief by requiring the withdrawal from Iraq. Furthermore, some conservatives may be concerned that this amendment would give strength to our enemy by showing American weakness and encouraging our enemy to wait until after the deadlines in this legislation to launch more attacks. Nothing in this amendment would end hostilities in Iraq, just the extent of U.S. participation in combating the hostilities.

Some conservatives may also be concerned at the language limiting the remaining presence of U.S. forces in Iraq after the withdrawal. The way the language is written, U.S. forces could only engage in counterterrorism operations against terrorist organizations, leaving open the question of whether our forces could fight against individual terrorists or against the agents of foreign governments (such as Iran).

Some conservatives may also be concerned at the war profiteering provisions in this amendment, especially the language allowing for lawsuits to be filed in any jurisdiction in which a defendant entity has a presence (which could allow for forum shopping when the defendant is national company with operations in numerous states).

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Amendment 3: Domestic Spending, Tax Increase

Title 1: Funding Levels FY 2008:

In millions

	Request	Amendment 3
Chapter 1		
Foreign Agriculture Service	745	1,245
Chapter 2		
Office of Inspector General	0	4
General Legal Activities	4	2
United States Attorneys	5	5
United States Marshals Service	15	19
FBI	140	175
DEA	8	12
ATF	4	4
Federal Prison System	9	9

Chapter 3		
Defense, Military Construction	2,011	3,275
Family House Construction, Navy and Marine	12	12
Base Realignment and Closure Account 2005	415	1,355
Department of Veterans Affairs	0	120
Chapter 4		
State, Administration of Foreign Affairs	1,868	1,691
State, International Organizations	387	387
Bilateral Economic Assistance	2,050	2,093
Democracy Fund	0	75
International Narcotics	734	419
Migration and Refugee Assistance	30	300
U.S. Emergency Refugee and Migration Assistance	0	25
Nonproliferation, anti-terrorism, and related	5	11
Foreign Military Financing Program	0	73
Total	8,393	11,310

Title I: Funding Levels FY 2009—Bridge Fund Supplemental Appropriations:

In millions

	Request	Amendment 3
Department of State	1,121	1,062
International Broadcasting Operations	0	8
Bilateral Economic Assistance	1,838	1,716
International Narcotics	225	205
Migration and Refugee Assistance	191	350
Nonproliferation, anti-terrorism, and related	0	5
Foreign Military Financing Program	170	170
Peacekeeping Operations	60	85
Total	3,605	3,600

Title II: Funding Levels FY 2008:

In millions

	Request	Amendment 3
Chapter 1		
Department of Commerce, Census	0	210
Federal Prison System	0	178
Chapter 2		
Corps of Engineers—Civil	5,761	5,761
Chapter 3	4	2
State unemployment insurance and employment service operations	0	110
Total	5,761	6,259

Title III—Educational Assistance

Provides \$51.6 billion over ten years in veterans educational assistance. Specifically, the new entitlement provides up to 36 months in lump-sum tuition payments equal to the highest in-state tuition rate in each state, a monthly housing stipend, and a \$1,000 annual stipend for books. The benefit would vary by the institution and the state, but the Pentagon estimates that it would provide a monthly benefit of approximately \$2,400—a 117% increase over the current MGIB allowance. Those individuals serving an aggregate of at least 36 months commencing on or after September 11, 2001, or who have been discharged for a service-connected disability after 30 continuous days, would be eligible for the full entitlement. These individuals would also be eligible for a “Yellow Ribbon G.I. Education Enhancement Program” if the tuition payments failed to cover the full cost of their chosen school. The Department of Veterans Affairs and the institution would split the remaining cost. A proportionally smaller entitlement would be extended to those on active duty for less time, so long as the individual serves an aggregate of 90 days after September 11, 2001.

Keeps the current MGIB program in place at current levels but creates an *alternative* entitlement program for those who have served post-September 11, 2001. Also provides up to \$1,200 in tutorial assistance to eligible individuals, up to \$2,000 to pay for one licensing or certification test, and certain supplemental education services. Individuals would have up to 15 years after the individual’s release from active duty to take advantage of these new benefits.

The bill prohibits individuals from receiving educational assistance and other current MGIB programs concurrently. Instead, each individual would elect which program to receive educational assistance from. For those electing to transition from the current MGIB program, the bill would refund individuals for their current enrollment contributions. The bill does not require an enrollment contribution.

For my information, see [this](#) RSC Policy Brief.

Title IV—Emergency Unemployment Compensation

Provides thirteen weeks of unemployment compensation to workers who have lost their jobs. For states with unemployment rates that exceed 6%, the benefits would be extended for another thirteen weeks. CBO scores this provision as costing \$14.5 billion over the FY 2008—2018 period.

Title V—Medicaid

Includes the House-passed version of H.R. 5613, which among other things, blocks seven CMS Medicaid regulations that would otherwise save taxpayers \$42 billion over ten years. For more information, see the RSC Legislative Bulletin [here](#).

Title VI—Accountability and Transparency in Government Contracting

Includes the text of two House-passed bills, [H.R. 5712](#) (Close the Contractor Fraud Loophole Act) and [H.R. 3928](#) (Government Funding Transparency Act of 2008).

Title VII—Tax Increase

Creates a surtax of 0.47% on individuals earning more than \$500,000 a year (or married couples earning more than \$1 million). This would have the effect of creating a new, seventh income tax bracket of 35.47%. According to CBO, this provision would increase taxes by \$51.6 billion over ten years.

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